

MEMORANDUM OF UNDERSTANDING
between
EB, LB 1, HG, KSG, AJ, IP, SM, JW, DR,
ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY
SITUATED
and
NEW YORK CITY DEPARTMENT OF EDUCATION, NEW YORK CITY
BOARD OF EDUCATION, and JOEL KLEIN

Introduction

This Memorandum of Understanding ("MOU"), effective as of September 24, 2008 is made by and between EB, LB 1, HG, KSG, AJ, IP, SM, JW and DR ("Lead Plaintiffs"), on behalf of themselves and others similarly situated ("Class Members"), and the New York City Department of Education, New York City Board of Education and Joel Klein (collectively, "DOE").

1. **WHEREAS**, on November 5, 2002, Lead Plaintiffs filed their Second Amended Complaint.
2. **WHEREAS**, on July 15, 2003, Lead Plaintiffs filed their Third Amended Complaint ("the Complaint"), alleging violations of the due process clause of 42 U.S.C. § 1983; the 14th Amendment of the U.S. Constitution; the Individuals with Disabilities Education Act, 29 U.S.C. § 794 ("IDEA"); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"); and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, *et seq.* ("ADA"), and the regulations promulgated there under. The Plaintiffs' claims under these federal constitutional and statutory provisions are herein collectively referred to as "Plaintiffs' Claims." The Complaint alleges that from 1999 through the present Defendants have violated and continue to violate Plaintiffs' rights.
3. **WHEREAS**, the Complaint further alleges that due to Defendants' conduct, many children with disabilities in New York City are being denied access to a free appropriate public education ("FAPE") and denied due process before being excluded from school.
4. **WHEREAS**, one component of the Complaint alleges that students who are suspended for an entire school year and placed at a Second Opportunity School, now referred to as a Long Term Suspension Site ("LTS Site") are denied FAPE at those sites.
5. **WHEREAS**, Plaintiffs are a class of disabled New York City children ages three to twenty-one, who have been or will be at risk of being suspended, expelled, transferred, or otherwise excluded from New York

City public schools for disciplinary reasons¹ without adequate notice and deprived of a free and appropriate education through suspensions, expulsions, transfers, discharges, removals, denials of access or other changes of educational placement (hereinafter referred to as "Class Members").

6. **WHEREAS**, the Parties have engaged in extensive discovery relating to the claims and defenses concerning the underlying events alleged in the Complaint. Lead Plaintiffs' expert conducted multiple inspections of the LTS Sites, in addition, Lead Plaintiffs' counsel obtained document discovery from Defendants and took depositions of individuals at the DOE.
7. **WHEREAS**, Lead Plaintiffs, by their counsel, have conducted discussions and arm's length negotiations with Defendants and their counsel with respect to an interim compromise of the issues related to the LTS Sites in dispute so as to permit the Parties an opportunity to continue to discuss a final resolution of the claims in the lawsuit, including the issues relating to the LTS Sites.

Now, therefore, in consideration of the mutual promises contained in this MOU, the sufficiency of which is acknowledged, Plaintiffs and the DOE (each individually a "Party" and collectively "the Parties") agree as following:

Article 1

Purpose

This MOU establishes the terms and conditions on which the Plaintiffs will forego litigation, including discovery (other than production of District 79 policy and procedure documents concerning the LTS Sites, which DOE will provide to Plaintiffs' counsel as those documents are finalized), for the 2008-2009 school year, unless as otherwise agreed to in writing, with respect to claims alleged in their Complaint that relate solely to LTS Sites.

Article 2

Student Programming

¹ "Disciplinary reasons" refers to any removal, suspension, expulsion, transfer, discharge or denial of access motivated wholly or in part by behavior disruptive of order or discipline within the school. E.B. v. New York City Board of Education, CV-02-5118 (CPS) (E.D.N.Y. June 29, 2005), citing N.Y. EDUC. LAW § 3214.

A. When a Student first appears at an LTS Site, LTS Site staff will conduct a comprehensive literacy assessment of each Class Member using the STAR or a comparable assessment tool.

1. Based on the assessment, Class Members will be deemed either: (a) a non-reader; (b) a striving reader; or (c) a reader approaching or at proficiency.

2. Class Members will be provided (a) an appropriate academic program delivered in a manner consistent with the result of the literacy assessment and (b) appropriate academic intervention services, which may include targeted literacy instruction, flexible grouping and/or small group instruction.

3. The LTS Sites will provide Class Members with instruction in the core subject areas. Class Members identified as non-readers or striving readers will be provided instruction in a reading program designed to improve reading across all content areas and, if appropriate, supplemental instruction in reading intervention strategies including decoding and fluency instruction.

B. The LTS Sites will implement the Class Members' Suspension Plans, developed using the procedures contained in the DOE's Standard Operating Procedures Manual for Special Education ("SOPM"), relevant portions of which are attached as Exhibit A. The LTS Sites will provide related services and assistive technology where required by Class Member's Suspension Plans.

Article 3

Turnaround for Children

The DOE will contract with Turnaround for Children, a non-profit organization, to provide, among other things, supplemental training and coaching to LTS Site staff concerning the social and emotional development of Class Members, including identifying students in need of additional mental health services beyond what can be provided at the LTS site and, if necessary, assisting LTS site in making necessary referrals to mental health service providers and/or securing support for family involvement.

Article 4

Staff

- A. **Staffing.** Each LTS Site will be assigned at least one (1) Special Education teacher, (2) Paraprofessional ("Para"), (3) Guidance Counselor, and (4) School Social Worker ("LTS Site Special Education Staff").
- B. **Programming and Scheduling.** LTS Site Special Education Staff will be programmed and scheduled with the objective of implementing Class Members' Suspension Plans. Where appropriate, LTS Special Education Staff may be programmed and scheduled to: (1) provide individualized and/or group instruction and other support services; and/or (2) act as lead instructor based upon the number of special education students in a classroom. In addition, a member of the LTS Special Education Staff (other than the Para) will have regular and meaningful meetings with content-area teachers and other LTS personnel to discuss Class Members' progress and possible strategies to improve the student's progress.
- C. **Professional Development.** The DOE will develop and provide LTS Site staff with ongoing professional development related to the effective implementation of (1) literacy strategies for Class Members; and (2) the provisions of this MOU. The DOE will provide Plaintiffs' counsel with the agendas and sign-in sheets within 15 school days of each training.

Article 5

District 75 Referrals

Where it is recommended that a Class Member be suspended for one year following a Suspension Hearing and associated MDR, and the Class Member's record indicates that he/she has been recommended for a District 75 placement but was not at such a placement at the time of the suspension, the designee of the Chief Executive Officer of the Office of Student Development shall consult with a representative of District 75, District 79, and the Office of Special Education Initiatives, and review the Class Member's suspension file and other records, to determine whether or not such placement in an LTS Site is appropriate. This determination will be made within two school days of receipt of the MDR determination.

Article 6

Monitoring

- A. The DOE will prepare monthly spreadsheets with specific data about Class Members as set forth on the attached document ("LTS Student Reports") (See Exhibit B).

1. The DOE will provide Plaintiffs' Counsel with the LTS Student Reports in an electronic database or spreadsheet format on a monthly basis commencing on November 29, 2008. Plaintiffs Counsel will keep the LTS Student Reports confidential pursuant to the Family Educational Rights and Privacy Act ("FERPA")² and IDEA.³; however, plaintiffs' counsel may divulge aggregate data and their analysis of the LTS Student Reports.

2. Plaintiffs will bring any issues raised by the LTS Student Reports to the DOE's attention and the Parties will undertake good faith negotiations to address any such issues.

B. Commencing no sooner than December 1, 2008, Plaintiffs' consulting expert will be permitted to inspect each of the eight LTS Sites up to two times during the 2008-2009 school year, for a total of 16 site inspections. Although staff at the LTS Sites may be informed that site inspections will take place between December 1, 2008 and the conclusion of the 2008-2008 school year, the date and time of any inspection at any particular site will not be provided to staff at the LTS Site until the day afternoon prior to inspection. Site inspections will provide Plaintiffs' consultant the opportunity to observe Class Members as they receive instruction and services. Inspections will be scheduled at times that permit Defendants' counsel's consulting expert to attend and observe the inspections. Plaintiffs' consulting expert will be permitted to request to review documents necessary to establish the accuracy of the information contained in the LTS Student Reports. Counsel for the parties will not be attending the LTS Site inspections.

1. Plaintiffs will bring any issues raised by the inspections to the Defendants' attention, and the Parties will undertake good faith negotiations to address any such issues.

Article 7 **Meetings with District 79**

In January and April 2009, Plaintiffs' Counsel and representatives of District 79 will meet to discuss the implementation of this MOU and concerns that Plaintiffs may have concerning the operations of the LTS Sites. Plaintiffs' Counsel shall raise issues of concern in writing before these meetings, in which case DOE will make reasonable efforts to respond to these concerns at or before the meetings.

² 20 U.S.C. § 1232g. See also 34 C.F.R. §§ 99.1 – 99.67.

³ 20 U.S.C. § 1400 et seq.

Article 8

Duration

Unless otherwise agreed to in writing by the parties, the term of this MOU will be for the 2008-2009 school year. At the conclusion of the 2008-2009 school year, the Parties will review the then-current status at the LTS Sites. Plaintiffs will advise Defendants whether the implementation of the above framework, plus any revisions to the above plan implemented by Defendants during the course of the school year, affords a basis for a final resolution of the issues related to the LTS Sites, or if Plaintiffs will resume litigation of these issues.

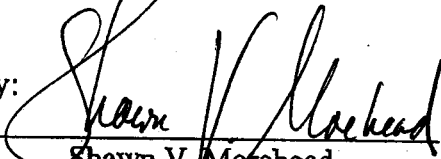
Article 9

Miscellaneous

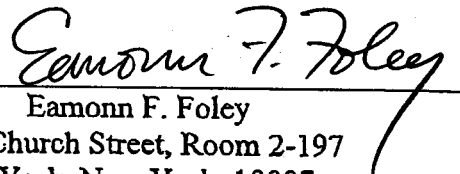
1. In the event that Plaintiffs believe that DOE has breached a material term of this MOU, Plaintiffs' sole remedy is to make a motion for leave to resume litigation, including discovery, with regard to their claims concerning the LTS Sites before the end of the 2008/2009 school year. Before making such motion, which may be made at any time during the pendency of this MOU, Plaintiffs shall notify Defendants' counsel in writing of their intention to make, and basis for, such a motion. The Parties shall then meet and confer in good faith in an effort to address Plaintiffs' concerns and avoid the necessity of such a motion.
2. Nothing contained in this MOU shall be construed as an admission by the Plaintiffs of any lack of merit to their allegations. In addition, nothing contained in this MOU shall be deemed an admission by Plaintiffs that the programmatic provisions of this MOU are sufficient to satisfy the requirements of the statutes and regulations at issue.
3. Nothing contained in this MOU shall be deemed to be an admission by the Defendants of any of the Plaintiffs' allegations, nor an admission by the Defendants that they have in any manner or way violated the rights of Plaintiffs, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, charters, by-laws, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York, including the DOE. Nothing contained herein shall be deemed to constitute a policy or practice of the City or DOE.
4. This MOU shall not be admissible in, nor is it related to, any other litigation or settlement negotiations except for enforcement of the provisions contained herein.

In witness whereof, the undersigned duly authorized representatives of the Plaintiffs and DOE have caused this Memorandum of Understanding to be duly executed as of September 25, 2008.

**ADVOCATES FOR CHILDREN
OF NEW YORK**

By: 
Shawn V. Morehead
151 West 30th Street, 5th Floor
New York, New York 10001
Telephone: (212) 822-9525


**MICHAEL A. CARDOZO
CORPORATION COUNSEL OF
THE CITY OF NEW YORK**

By: 
Eamonn F. Foley
100 Church Street, Room 2-197
New York, New York 10007
Telephone: (212) 788-0781

-and-

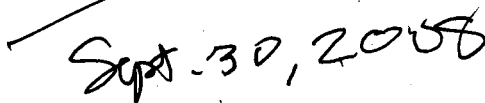
Counsel for Defendants

DAVIS POLK & WARDWELL

By: 
Sharon Katz
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4508
**Counsel for Lead Plaintiffs and the
Class**

SO ORDERED.

Dated: Brooklyn, New York
September 11, 2008




s/Hon. Charles P. Sifton

United States District Judge

EXHIBIT A

STANDARD OPERATING PROCEDURES MANUAL:

The Referral, Evaluation, and Placement of School-Age Students with Disabilities

Division of Teaching and Learning
Dr. Marcia V. Lyles
Deputy Chancellor

Office of Special Education Initiatives
Linda Wernikoff
Executive Director



SEPTEMBER 2008

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SECTION 10: STUDENT'S SUBJECT TO DISCIPLINE

IN THIS SECTION...

- Students with Disabilities Subject to Discipline: An Overview
- MDR Guidance: A Step-by-Step Review
- Required Steps Following the MDR
- The Special Education Suspension Plan: An Overview
- Guidelines for Making a Special Education Instructional Program Recommendation
- Guidelines for Making a Recommendation for Related and Support Services
- Suspension Transportation Guidelines
- Implementing the Special Education Suspension Plan

STUDENTS WITH DISABILITIES SUBJECT TO DISCIPLINE: AN OVERVIEW

Students with disabilities and students for whom a 504 Plan has been developed who are removed from their current educational programs for more than 10 school days are entitled to specific protections under the Individuals with Disabilities Education Improvement Act (IDEIA) and Federal and State Regulations.

Manifestation Determination Review Notification

SOHO will send a notification to the school that the school must schedule and conduct an MDR under the following circumstances:

- If the student is suspended by the Superintendent and the disposition results in the student being removed for more than 10 consecutive days; or
- If the imposition of either a Teacher Removal or Principal's Suspension will result in the student being removed for more than 10 aggregate school days in a 40 day period

In addition, where a Principal seeks to impose a Principal's Suspension or a Teacher Removal and there have been multiple disciplinary actions involving the student during the current school year that constitute more than 10 days, the Principal must determine whether this student's behavior constitutes a pattern. The Principal can access the student's disciplinary history in SOHO. If the Principal determines that a pattern exists, an MDR must be scheduled by the Principal and noted in SOHO. When determining whether a pattern exists, the Principal must consider whether the behavior for which the discipline is sought to be imposed is substantially similar to the student's behavior in previous incidents that resulted in discipline, the length of prior suspensions, the total amount of time the student has been removed from school, and the proximity of the removals and suspensions to one another.

The Manifestation Determination Review (MDR)

A determination of whether the student's disability or the failure of the school district to provide services on the student's IEP was the direct cause of the act for which the student was suspended must be made. This is called a Manifestation Determination Review (MDR).

If the MDR Team finds that the act for which the student was suspended was a result of his/her disability (a "YES" MDR), the student will be immediately returned to school, unless the student is removed to an Interim Alternate Educational Setting (IAES), in which case the suspension term will continue up to 45 school days. The Suspension Hearing Office will notify the school if the IAES exception applies. In the case of either a "YES" MDR or a removal to an IAES setting, the school must complete a new, or update an existing, Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP).

If, on the other hand, the MDR Team finds that the act for which the student was suspended was not a manifestation of his/her disability (a "NO" MDR), the student is subject to the same disciplinary options as general education students. In addition, the school may review an existing or complete a new FBA and BIP, if appropriate.

The IEP Team meeting

The IDEIA requires an IEP Team configured as a subcommittee to convene and determine the level of special education supports and services that a student who will be out of his/her regular special education program for more than 10 school days will receive at his/her suspension site. This is called a suspension plan.

Please Note: Schools may be required to develop a suspension plan prior to the suspension hearing. The Suspension Hearing Office or a SOHO referral will inform the principal/designee when a suspension plan and MDR is required.

When an MDR is conducted, the following steps must be taken:

- If the MDR outcome is "YES," then the student is immediately returned to his/her regular program in his/her school. The IEP Team is not required to meet to develop a suspension plan unless an IAES exception applies. Schools will be informed if an IAES exception applies.
- If the outcome of the MDR is "NO," or an IAES exception applies, the IEP team must meet and develop a suspension plan.

Please be aware that the suspension plan is not an IEP and is used only when the student is attending a suspension site. Step-by-step considerations for development and implementation of the suspension plan are included in this chapter.

MDR GUIDANCE: A STEP-BY-STEP REVIEW

First, confirm that the student is subject to IDEIA protection:

- Does the student have an IEP or 504 Plan?
- Has it been determined by the Suspension Hearing Office that the Department of Education is "deemed to have knowledge" that the student was a student with a disability prior to the conduct in question?

If the student does NOT have an IEP, the Department may still be "deemed to know" that the student is a student with a disability if, prior to the conduct in question:

- The parent expressed concern in writing to supervisory school staff, the Committee on Special Education Office, or to a teacher of the student informing them that the student is in need of special education (note that this may be made orally only if the parent does not know how to write or has a disability that prevents a written statement); OR
- The parent of the student has requested an evaluation of the student to determine whether the student is a student with a disability; OR
- A teacher of the student, or other personnel of the school district, has expressed specific concerns in writing about a pattern of behavior demonstrated by the student directly to the Committee on Special Education Office or to the school principal.

Exceptions: The Department is NOT "deemed to know" if:

- The parent of the student has not allowed an evaluation of the student;
- The parent of the student has refused services;
- It was determined by the IEP Team that the student is not a student with a disability.

If the Department is "deemed to know," the student must be provided with an expedited evaluation within 15 school days.

Attendance at the Manifestation Determination Review

The IDEIA requires that the following people participate in the MDR:

- A representative of the school district familiar with the student
- A representative of the school district knowledgeable about the interpretation of information about child behavior. This role may be filled by the school psychologist or social worker
- The Parent (please note that the parent may participate by phone)
- Other members of the IEP Team as determined by the MDR Team and the parent.

Other members of the IEP Team must be notified that they may be required to attend an IEP Meeting immediately following the MDR to review and/or revise the student's BIP or, if the team finds the behavior was not a manifestation, to develop a Suspension Plan for the student.

Please Note: If a member of the Manifestation Determination Team determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, a reevaluation must be requested immediately following the completion of the Manifestation Determination meeting.

Parents must receive notification in writing of participants and their right to request the participation of additional members of the IEP Team. If a parent has been provided with written notification of the meeting 5 school days prior to the scheduled meeting and refuses to participate, the meeting may still take place.

Additional Preparation for the Manifestation Determination

The MDR Team must then review all relevant information in the student's file. "All relevant information" means, at a minimum, the student's IEP or 504 Plan (if applicable), Functional Behavioral Assessment, Behavioral Intervention Plan, classroom observations, the OORS report, relevant evaluations, and any relevant information provided by the parents.

Required Questions at the Manifestation Determination

Once the above steps have been taken, a determination must be made whether the student's behavior was a manifestation of his or her behavior. A review the IEP and other relevant materials for evidence of the student's disability, and of the present levels of performance and annual goals on the student's IEP to gain an understanding of all of the student's disability related issues must take place. Stereotyping about the student's disability type from his or her IEP and/or official classification must be avoided.

Consideration must be given to the behavior for which the student was suspended, the events immediately leading up to the behavior for which the suspension is sought, and patterns of previous behavior.

A determination of whether there is a causal link between the conduct for which the student was suspended and the student's disability must be made. The events that led to the act for which the student was suspended and patterns of previous behavior must be considered. In making this determination, the student's ability to control his or her behavior, including

impulsivity issues must be considered, separating out conduct that only bears an attenuated relationship to the student's disability.

Although the primary focus remains on the behavior subject to disciplinary action, the Team must also evaluate disability-related antecedent triggers that may have occurred immediately prior to the behavior subject to disciplinary action. The Team must describe on the **Manifestation Determination Worksheet** any disability-related antecedent triggers that occurred immediately prior to the behavior subject to disciplinary action. Additionally, if the behavior fits within any previous patterns of behavior, a description of the pattern of behavior must also be described on the **Manifestation Determination Worksheet**.

Keeping in mind the above, the following questions must be answered during the Manifestation Determination:

- Was the conduct in question **caused by** or did it have a **direct and substantial relationship** to the student's disability? Please note that if the answer to question is "Yes," the conduct in question must be deemed a manifestation of the student's disability and the student must return to school immediately or, if the student is assigned to an IAES, remains in an IAES.
- Was the conduct in question a **direct result** of the DOE's failure to implement the student's IEP?

In reaching this determination, the Team must consider whether a part of the IEP was not implemented, and if so, consider whether this non-implementation directly results in the conduct in question, separating out any conduct that bears an attenuated relationship to the student's disability. The aspects of the student's IEP that were not fully implemented when the behavior occurred must be indicated on the **Manifestation Determination Worksheet**.

The conduct in question must have a **direct and causal relationship** to the student's disability, or must be the **direct result** of the failure of the Department to implement the student's IEP.

As a general rule, the MDR must be completed within 10 school days from the day the referral was made by the Suspension Hearing Office or by SOHO. In some cases, a shorter timeline will be indicated in the referral e-mail. The outcome of the MDR must be noted in SOHO, along with attendance information.

If during the MDR, deficiencies are identified in the student's IEP or with the student's placement, or in implementation of the IEP, the school must take immediate steps to remedy the deficiency.

Please Note: It is important that the Manifestation Determination Review (MDR) Checklist be fully completed when conducting and MDR.

REQUIRED STEPS FOLLOWING THE MDR

If it is determined that the student's behavior **was** a manifestation of his or her disability then the student must return to school immediately, or if the student is assigned to an IAES, remain in the IAES, and the following steps must take place:

- An FBA and BIP must be developed and implemented immediately if the student does not already have one. If the student already has a BIP, the BIP must be reviewed and implemented immediately to address the behavior that resulted in the suspension.

- If the student's IEP is not fully implemented, steps must be taken **immediately** to remedy the deficiencies.
- If a member of the Manifestation Determination Team determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, s/he must request a reevaluation immediately following the completion of the Manifestation Determination meeting.

If it determined that the student's behavior was **not** a manifestation of his or her disability or if the student is assigned to an IAES setting, the following steps must be taken:

- The IEP Team must convene immediately following the MDR and develop a **Suspension Plan** to determine services to be provided at the suspension site.

The IEP Team members must consist of:

- The Parent
- The Student's Special Education Teacher. (If the student has multiple teachers, the teacher most familiar with the student should attend)
- The Student's General Education Teacher if the child participates in a general education environment
- A District Representative
- As part of the IEP Team meeting, the Team must make a determination of whether the student's behavior necessitates the development of an FBA and BIP. If the student requires an FBA/BIP, both must be developed and implemented immediately. If an FBA and BIP have already been developed for the student, they must be reviewed and modified, as necessary, to address the student's behavior. The FBA and BIP must be forwarded to the student's suspension site upon completion. For additional information regarding the development of the Functional Behavioral Assessment, and the Behavior Intervention Plan, please refer to Functional Assessment and Behavioral Intervention Planning by Sharon Lohrmann, Ph.D, Assistant Professor of Pediatrics, EM Boggs Center, Robert Wood Johnson Medical School.
- If a member of the Manifestation Determination Team determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, s/he must request a reevaluation immediately following the completion of the Manifestation Determination meeting.

The Suspension Plan must be completed in its entirety. The completed Suspension Plan, along with the student's IEP, MDR Attendance Sheet, the MDR Checklist, the Behavioral Intervention Plan (if applicable) and Suspension Transportation Variance Form (if applicable), must be faxed or otherwise provided to the Student Suspension Office.

THE SPECIAL EDUCATION SUSPENSION PLAN: AN OVERVIEW

As a general matter, students with disabilities who are suspended for more than 10 days must receive services that allow them to participate in the general education curriculum and to progress towards meeting the goals on their IEP. The Suspension Plan is not a replication of the student's IEP; rather it provides the student and the staff at the suspension site with a description of the special education supports and services the student will receive during

his or her suspension term. The student's service level, intensity, and frequency may be different than services indicated on the student's current IEP.

GUIDELINES FOR MAKING A SPECIAL EDUCATION INSTRUCTIONAL PROGRAM RECOMMENDATION

Review the student's IEP, and any current relevant materials, reports and assessments, including a Behavioral Intervention Plan, if applicable. The Special Education Instructional Program indicated on the Student's Suspension Plan does not indicate specific supports. Instead, the Plan indicates the number of direct and indirect periods of special education teacher support services that must be provided at the suspension site.

GUIDELINES FOR MAKING A RECOMMENDATION FOR RELATED AND SUPPORT SERVICES

- Review the student's IEP, including the goals and instructional levels;
- Consider that Related Services are services that a student requires in order to benefit from his/her educational program;
- Consider that most suspension sites provide counseling for all students;
- Consider the length of the student's suspension term;
- When considering IEP-mandated paraprofessionals, take into account the environment the student will be attending to determine if this service is appropriate for the student while serving a suspension term.

SUSPENSION TRANSPORTATION GUIDELINES

All students will continue to be transported to their suspension site in the same manner they were transported to their school site, subject to only two exceptions:

- Students who walk to school and will now attend a suspension site to which they are unable to walk because of the distance from their home will receive a Metrocard;
- Students who travel by public transportation to school, but whose cognitive and/or emotional condition present extenuating circumstances given the travel distance to a suspension site may receive yellow bus transportation. The IEP Team must consider the student's disability-related issue, the length of time and/or distance between their home and the suspension site and make a transportation request by filling out the **Suspension Transportation Variance Form**.

IMPLEMENTING THE SPECIAL EDUCATION SUSPENSION PLAN

As part of the intake process when a student first arrives at the suspension site, the Suspension Plan must be reviewed thoroughly and fully implemented immediately. While staff must review the student's current IEP for information regarding testing accommodations and other alerts, the student's Suspension Plan is the document that must be fully implemented.

The Special Education Teacher must monitor and track attendance of all direct service provided to students using the SourceCorp Attendance Booklets. **Please note that these services are not called in to the Interactive Voice Response (IVR) System for reporting, and are not sent into SourceCorp for scanning on a monthly basis, but will be collected at the end of the school year.** They are maintained at the suspension site.

Implementing Related and Support Services

If an RSA has already been issued and is currently in effect for a related service, the student may continue to receive that service by the RSA provider.

Attempts must be made to provide related services by utilizing Department of Education staff assigned to the Suspension Site, or by staff assigned to the host school in which the suspension site is housed. The suspension site may provide this service per session or by using shortage area prep (e.g. for speech). If Department of Education staff is not available, contract agency staff may continue to serve students at the new site if the student is receiving the related service from a contracted provider.

If the steps described above are not applicable or feasible, an RSA may be issued for the school year if an RSA has not already been issued for the same service. If an RSA is issued for a student, the dates the RSA is in effect (start-finish) must be indicated on the top right-hand corner and may only cover the dates the student is suspended.

Attendance must be tracked for all related services indicated on the Suspension Plan using the SourceCorp Attendance Booklets. **Please note that these services are not called into the Interactive Voice Response (IVR) System for reporting, and are not sent into SourceCorp for scanning on a monthly basis, but will be collected at the end of the school year.** They are maintained at the suspension site.



Notice of MDR/Suspension Plan to Parent
(SCHOOL LETTERHEAD)

Date: _____

Student's Name: _____

Date of Birth: _____

NYC ID #: _____

School: _____

Program: _____

Mr./Mrs. _____

Address _____

City, State Zip Code _____

Dear Mr./Mrs. _____

In accordance with Chancellor's Regulation A-443, a Manifestation Determination Review must be conducted to determine whether your child's misconduct was the result of his/her disability. Additionally, a Suspension Plan, and a Functional Behavioral Assessment and a Behavioral Intervention Plan may also be developed or reviewed. The meeting will be held on:

Date: _____

Time: _____

Location: _____

Telephone: _____

Your attendance is required at this meeting and we urge you to attend. The school psychologist or social worker and a person familiar with the student will be attending the MDR meeting. You have the right to request that other members of the IEP Team participate in the meeting.

If at the MDR meeting it is determined that your child's misconduct was not the result of his/her disability, it may be necessary for an IEP Team to meet to formulate a suspension plan describing the services your child will receive while on suspension. Your participation in both of these meetings is crucial and we urge you to attend.

Please call me at the following phone number _____ if you have any questions regarding this process or would like to request that additional members of the IEP Team attend. Thank you.

Respectfully,

Enc. Procedural Safeguards Notification

**Manifestation Determination Attendance Sheet
FORM C**

MANIFESTATION DETERMINATION ATTENDANCE SHEET

Student's Name:

NYC ID #:

Date:

Required Members

Individual knowledge about the interpretation of information about child behavior. (This may be the School Psychologist or School Social Worker.)

Representative familiar with the student

Parent of Student

Additional Members if Parent and IEP
Team members Agree

Title and Signature

Title and Signature

Title and Signature



Manifestation Determination Worksheet

The Principal of the school from which the student is suspended must ensure that the steps outlined below are taken. This form must be filled out by the members of the MDR team and provided to _____ by the end of the school day in which the MDR takes place.

Step 1...

Student's Name: _____

Student's NYC ID #: _____

Date of MDR Meeting: _____

Confirm that the student requires an MDR:

(1) Does the student have an IEP or a 504 Plan? ☐ Yes ☐ No

(2) Has it been determined by the Suspension Hearing Office that the Department of Education is "deemed to have knowledge" that the student was a student with a disability prior to the conduct in question? ☐ Yes ☐ No

If the answer to either question is Yes," proceed to **Step 2**.

Step 2...

Arrange for MDR Team Participants. The following are required:

☐ Individual knowledgeable about the interpretation of information about child behavior. (This may be the School Psychologist or School Social Worker.)

Title _____ Signature _____

☐ Representative familiar with the student

Title _____ Signature _____

☐ Parent of Student

Signature _____

Additional IEP Members as determined by the Parent and IEP Team members

Title and Signature _____

Title and Signature _____

Notify other members of the IEP Team that they may be required to attend an IEP Meeting immediately following the MDR to review and/or revise the student's BIP or, if the team finds the behavior was not a manifestation, to develop a Suspension Plan for the student.

Please note:

If a member of the Manifestation Determination Team determines that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation, s/he must request a reevaluation immediately following the completion of the Manifestation Determination meeting.

Step 3...

Prior to the MDR, gather all relevant information from the student's file. This information may include, but is not limited to, the student's IEP or 504 plan, FBAs, BIPs, evaluations, teacher observations, information provided by the parent(s), and the OORS report. Indicate below the document(s) reviewed and indicate the date of the document:

Document

Date

☐ FBA

☐ BIP

☐ The student's IEP (or 504 plan, if the student has one)

☐ Teacher observations

☐ Relevant information provided by the parent(s)

–Please Specify

☐ OORS Report

☐ Evaluations – Please specify

☐ Other – Please specify

Step 4...

Once the above steps have been taken, you must determine whether the student's behavior was a manifestation of his or her behavior. In doing so, you must keep the following in mind:

- (a) Review the IEP and other relevant materials for evidence of the student's disability. Review the present levels of performance and annual goals on the student's IEP to gain an understanding of all of the student's disability related issues. Avoid stereotyping about the student's disability type from his or her IEP and/or official classification.
- (b) Include in your consideration the behavior for which the student was suspended, the events that led up to the behavior for which the suspension is sought, and patterns of previous behavior.
- (c) Determine the causal link between the conduct for which the student was suspended, the events that led to that behavior, patterns of previous behavior and the student's disabilities. In doing so, consider the student's ability to control his or her behavior, including impulsivity issues. Separate out conduct that only bears an attenuated relationship to the student's disability.

Keeping in mind the above, answer the following questions:

(1) Although the primary focus remains on the behavior subject to disciplinary action, the Team must also evaluate disability-related antecedent triggers that may have occurred immediately prior to the behavior subject to disciplinary action. Please describe below any disability-related antecedent triggers that occurred immediately prior to the behavior subject to disciplinary action

(2) If the behavior fits within any previous patterns of behavior, describe the pattern of behavior:

(3) Was the conduct in question **caused by** or did it have a **direct and substantial relationship** to the student's disability? ☐ Yes ☐ No

If the answer to question (3) is "Yes," the conduct in question must be deemed a manifestation of the student's disability and the student must return to school immediately or, if the student is assigned to an IAES, remains in an IAES. Please proceed to Step 5.

Step 5...

(1) List aspects of the student's IEP that were not fully implemented when the behavior occurred:

(2) Was the conduct in question a **direct result** of the DOE's failure to implement the student's IEP?

☐ Yes ☐ No

In reaching this determination, the Team must:

Consider whether a part of the IEP was not implemented, and if so, consider whether this non-implementation directly results in the conduct in question, separating out any conduct that bears an attenuated relationship to the student's disability.

If the answer to question 2 is "Yes," the conduct in question must be deemed a manifestation of the student's disability and the student must return to school immediately, or, if the student is assigned to an IAES, remain in an IAES. If the outcome to question 2 is "No," steps must be taken **immediately** to remedy the deficiencies in the implementation of the student's IEP.

Step 6...

If it is determined that the student's behavior was a manifestation of his or her disability (If the answer to question 3 in step 4 **or** question 2 in step 5 is YES), you must do the following:

- If the student does not already have an FBA and BIP, develop and implement the BIP immediately. If the student already has a BIP, review and implement it immediately to address the behavior that resulted in the suspension.
- If any part of the student's IEP is not fully implemented (as noted in question 1, Step 5), then the deficiencies must be immediately remedied.
- If any member of the Manifestation Determination Team believes that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a change in the student's program or a reevaluation of the student's disability, immediately following the completion of the MDR meeting, submit a request for a reevaluation.

If it is determined that the student's behavior was NOT a manifestation of his or her disability (if the answer to question 3 in Step 4 **and** question 2 in step 5 is NO, you must do the following:

- The IEP Team must convene immediately following the MDR and develop a suspension plan to determine services to be provided at the suspension site.
- As part of the IEP Team meeting, the Team must make a determination of whether the student's behavior necessitates the development of an FBA and BIP. If the student requires an FBA/BIP, both must be developed and implemented immediately. If an FBA and BIP have already been developed for the student, they must be reviewed and modified, as necessary, to address the student's behavior. The FBA and BIP must be forwarded to the student's suspension site upon completion. For additional information regarding the development of the Functional Behavioral Assessment, and the Behavior Intervention Plan, please refer to Functional Assessment and Behavioral Intervention Planning by Sharon Lohrmann, Ph.D, Assistant Professor of Pediatrics, EM Boggs Center, Robert Wood Johnson Medical School.
- If any member of the Manifestation Determination Team believes that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a change in the student's program or a reevaluation of the student's disability, the member must, submit a request for a reevaluation immediately following the completion of the MDR meeting.

Suspension Plan

This Plan provides the student and the staff at the suspension site with a description of the special education supports and services the student will receive during his/her suspension term. Suspension site staff must refer to the student's IEP for all additional information, including environmental and instructional modifications needed to assist the student in meeting his/her goals, participation in assessments, required testing accommodations, promotion criteria and annual goals, all of which must continue to be implemented.

1. Provide Suspension Plan Team Attendance Information

Parent: _____
Special Education Teacher: _____
General Education Teacher (if applicable): _____
District Representative: _____
Other members with knowledge: _____

2. Provide Student Information

Name: _____
DOB: _____
NYCID: _____
Home Address: _____
School Attending: _____

3. Review IEP goals and indicate below the special education instructional program, and related and support services that will help the student work towards meeting those goals:

Special Education Instructional Program

- Indicate number of special education teacher support service periods per week:
- Indicate whether the special education support will be provided directly or indirectly:
 - Direct Service is specially designed and/or supplemental instruction to support the participation of the student with a disability in the general education classroom.
 - Indirect Service refers to consultation with the student's general education teacher(s).

☐ Direct Service; # of periods per week: _____

☐ Indirect Service; # of periods per week: _____

Related Services

Type of Service (e.g. Speech)	Group Size (e.g. 5)	Frequency (e.g. 3x a week)

Other Support Services

Type of Service (e.g. IEP Mandated Health Services provided by a paraprofessional)	Group Size (e.g. 1)	Frequency (e.g. 5)

Provide information below regarding the student's present behavioral performance:

Provide information below regarding the student's academic performance, by subject area:

Subject Area:

Comments:

Subject Area:

Comments:

Subject Area:

Comments:

Subject Area:

Comments:

Please provide any other information that you believe might help the student meet the goals on the IEP. Additionally, for informational purposes, please include any strategies that you have found helpful.

Transportation Variance Request



NEW YORK CITY DEPARTMENT OF EDUCATION SUSPENSION TRANSPORTATION VARIANCE FORM

(Please Print)

Suspension Site
Name:

Suspension Site Code:

Service District: _____

Service Category: _____

Handicap Code: _____

Date Transportation Starts: _____

Date Transportation Ends: _____

Student ID # (Delete first two digits of ID and replace with "S-V"):

PUPIL INFORMATION

(Please Print)

Date of Birth: _____

Sex: ☐ Male ☐ Female

First Name: _____

Middle Initial: _____

Last Name: _____

Street Name or Number: _____

Building Number: _____

Apartment: _____

Zip Code: _____

Phone No.: _____

PARENT INFORMATION

(Please Print)

First Name: _____

Last Name: _____

Phone No.: _____

IN CASE OF EMERGENCY

(Please Print)

First Name _____

Last Name _____

Home Phone No. _____

Emergency Phone No. _____

SPECIAL ALERTS

(Please Print)

AUTHORIZATION

Authorized by: _____

Date: _____

MEMORANDUM OF UNDERSTANDING
between
EB, LB 1, HG, KSG, AJ, IP, SM, JW, DR,
ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED
and
NEW YORK CITY DEPARTMENT OF EDUCATION, NEW YORK CITY
BOARD OF EDUCATION, and JOEL KLEIN

EXHIBIT B

Long Term Suspension (LTS) Student Reports for Class Members

Pursuant to the terms of the Memorandum of Understanding between Plaintiffs and Defendants in this matter, Defendants will provide Plaintiffs with LTS Student Reports on a monthly basis commencing on November 29, 2008. These reports will contain the following information:

Total Number of Students Assigned to Each Suspension Site

Student Suspension/Intake Information

- Student Number
- Date of Suspension
- Length of Suspension
- Suspending School
- Suspension Site
- Student's Age
- Student's Grade
- Date of Referral to Site

Student Services Information

- IEP
- Date IEP Received at Site
- IEP Goals
- Description of How IEP Goals are Met at Site
- 504 Plan
- Date Suspension Plan Received by Site
- Suspension Plan Requirements
- Description of How Suspension Plan is Met at Site

Student's Academic Information on Suspension

- Student's Functional Levels
- Student's Academic Program
- Attendance
- City- and Statewide Test Scores (incl. 7th and 8th citywide exams, Regents exams) and dates (tests taken while on suspension)

Student Transition Information

- Credits Earned on Suspension
- Date Left Suspension Site

- **Receiving School**